Navigating the US Tax Information, Reporting and Withholding rules applicable to CSDs and their Participants

AMERICAS´S CENTRAL SECURITIES DEPOSITORIES ASSOCIATION (ACSDA)

July 22, 2021
Agenda

1. Overview of withholding and reporting regimes
2. Due diligence
3. Withholding
4. Reporting
5. Four typical CSD account structures
6. Tax refunds
7. Overview of the Common Reporting Standard
Overview of the U.S. withholding and reporting regimes
U.S. information reporting and withholding regimes

Chapter 61: taxation of U.S. persons
— Governs the reporting and taxation of payments made to U.S. persons
  - U.S. persons are taxed by the U.S. on their worldwide income including income derived from non-U.S. activities

Chapter 3: taxation of non-U.S. persons
— Governs the reporting and taxation of payments of U.S. source FDAP income to non-U.S. persons
  - 30% withholding and reporting of payments of U.S. source fixed, determinable, annual or periodic ("FDAP") income. FDAP income generally includes all income except:
    - Gains from the sale of real or personal property, and
    - Items of income excluded from gross income (e.g., tax-exempt municipal bond interest)
— Non-U.S. persons are also taxed by the U.S. on a net basis on income effectively connected with a U.S. trade or business

Chapter 4: FATCA – expansive reporting of U.S. persons who earn income and hold assets directly or indirectly through non-U.S. financial institutions
Terms and concepts

**Withholding agent**
- Any person who has control, receipt, custody, disposal, or payment of income of a non-U.S. person that is subject to withholding.
  - Examples: Banks, Brokers, Corporations, Partnerships, Trusts

**Responsibilities include:**
- Liable for any required withholding
- Required to remit withheld amounts to IRS on a particular schedule
- Required to file tax returns and issue information returns for payments

**A withholding agent must determine:**
- What is paid
- When is it paid
- To whom is it paid

These questions drive the documentation, withholding and reporting obligations of the withholding agent under the FATCA and chapter 3 (including QI) withholding regimes
FATCA - Overview

Chapter 4

- FATCA aims to minimize offshore tax evasion by creating enhanced due diligence and information reporting requirements applicable to U.S. financial institutions (USFIs) and foreign financial institutions (FFIs)
- FATCA is a filter on top of chapter 3. Noncompliance with FATCA may result in a 30% withholding tax on all withholdable payments
- Treasury/IRS accordingly describe FATCA as a “reporting regime”
- FATCA requires certain FFIs, Nonfinancial Foreign Entities (NFFE) and U.S. Withholding Agents (USWA) to provide information to the IRS identifying U.S. Persons investing on their own behalf as well as via their ownership in non-U.S. entities
Intergovernmental Agreements (“IGAs”)

Certain non-U.S. financial institutions were unable to comply with FATCA because of conflicting local laws. In response, the IGAs were developed as a way to resolve these conflicts and enable non-U.S. FIs to comply and avoid withholding on U.S. source income.

Model 1 IGAs

- Require local financial institutions to implement account opening and due diligence procedures to identify U.S. accounts and report them to the local authority for exchange with the IRS.

Model 2 IGAs

- Require local financial institutions to do the same, but report directly to the IRS instead of to the local authority.

Note: A jurisdiction will be treated as having an IGA in effect for registration purposes if it is listed on the U.S. Treasury Department website as having an “agreement in substance.” As of July, 2021, 8 out of 113 IGAs in this category.

As of July 2021, 9 out of the 113 IGAs were signed however had not yet entered into force, they are, however, treated as being in effect.

The 113 countries entering into IGAs represent approximately 90% of global GDP (ex United States).

The IRS is in the process of reviewing jurisdictions included on the list but for which the IGA is not yet in force to see if the country is making sufficient progress to implementation such that the country may remain on the list.
Overview - Foreign Financial Institution ("FFI")

Extremely broad definition of what an FFI can encompass

Types of FFI:

<table>
<thead>
<tr>
<th>Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participating FFI (PFFI)</td>
<td>FFI which enters into an agreement with the IRS.</td>
</tr>
<tr>
<td>Model 1 Intergovernmental Agreement (IGA) FFI</td>
<td>FFI located in a jurisdiction that has a Model 1 IGA or agreed one in substance (e.g. China).</td>
</tr>
<tr>
<td>Model 2 IGA FFI</td>
<td>FFI located in a jurisdiction that has either signed a Model 2 IGA or agreed one in substance (e.g. Nicaragua).</td>
</tr>
<tr>
<td>Registered deemed compliant FFI</td>
<td>FFI which meets specific requirements. While it is required to register, it is not required to comply with the terms of an FFI Agreement.</td>
</tr>
<tr>
<td>Certified deemed compliant FFI</td>
<td>FFI which does not need to register with the IRS, rather it is only required to certify as to its compliance with FATCA.</td>
</tr>
<tr>
<td>Nonparticipating FFI (NPFFI)</td>
<td>FFI located in a jurisdiction which does not have an IGA with the U.S. and that chooses not to enter into an agreement with the IRS or an FFI from an IGA jurisdiction that has failed to comply with its FATCA obligations and has been designated as an NPFFI.</td>
</tr>
</tbody>
</table>
Overview - Nonfinancial Foreign Entity ("NFFE")

An NFFE is any non-U.S. entity that is not an FFI

— Certain entities deemed to present a low risk of tax avoidance will fall into one of the several categories of excepted NFFEs
  - Excepted NFFEs include entities that are publicly traded or that conduct active trades or businesses and meet certain income and asset thresholds
  - It is anticipated most NFFEs will be excepted NFFEs

— The goal of documenting NFFEs is to identify substantial U.S. owners
  - “Substantial” means >10% U.S. owners of non-U.S. corporations or partnerships and >10% beneficiaries of non-U.S. trusts
  - A U.S. grantor of a grantor trust is always considered a “substantial U.S. owner”

Note: Where a FATCA IGA is in place, “substantial owner” is replaced by “controlling person,” always a natural person, with threshold generally interpreted to be ≥ 25%
Overview - U.S. Withholding Agent ("USWA")

A USWA is any U.S. person or U.S. branch of a non-U.S. person that has control, receipt, custody, disposal or payment of a withholdable payment or foreign passthru payment.

- USWAs include banks, broker-dealers, custodians, private equity funds, hedge funds, mutual funds, insurance companies and multinational corporations.

USWAs, including their non-U.S. branches, will also be required to comply with certain FATCA requirements.

Key differences between FATCA for PFFIs and FATCA for USWAs:
- USWAs are only required to document those persons to whom they are making withholdable payments (i.e., "payees"), not all account holders.
- Individual account holders of USWAs are out of scope for FATCA purposes as they should already be documented for purposes of Form 1099 and 1042-S reporting and withholding.
Due diligence
Account due diligence process

1. Document account holder
2. Validate documentation
3. Manage changes in circumstances
4. Apply presumptions in absence of valid documentation
Step 1
Document account holder — FATCA, and chapters 3 and 61
Step 1: Document account holder

Obtain the appropriate documentation from each account holder
- Forms W-8/W-9;
- Written Statements;
- Self-certifications (IGA jurisdictions only); or
- Documentary evidence (e.g., KYC)

Within the United States, financial accounts must be documented using Forms W-8 and W-9
Non-U.S. persons

Non-U.S. persons must be documented with Forms W-8 or self-certification forms, depending on the payment type and location of the payor.

For payments of U.S. source FDAP income, non-U.S. persons who are the beneficial owners of the income must provide the following documents:

**Individuals:** Form W-8 or a form of KYC listed on the country QI KYC attachment of the QI maintaining the account.

**Entities:** Either a Form W-8 or a form of KYC per the QI KYC attachment AND a treaty statement (if making a claim for treaty relief).

For purely FATCA purposes, a self-certification must be provided by the account holder (who may or may not be the beneficial owner).
### Forms W-8:

<table>
<thead>
<tr>
<th>Form W-8BEN provided by a non-U.S. individual</th>
<th>Form W-8EXP provided by a non-U.S. person that is a beneficial owner which is exempt from taxation under the Internal Revenue Code (e.g., international organization, foreign government, etc.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Form W-8ECI provided by a non-U.S. person claiming income is effectively connected with the conduct of a trade or business in the U.S.</td>
<td>Form W-8IMY and withholding statement (if applicable) provided by a non-U.S. person that acts as an intermediary (e.g., QI, NQI) or is a flow-through entity (partnership, simple trust, grantor trust)</td>
</tr>
<tr>
<td>Form W-8CE provided by a U.S. expatriate subject to certain tax rules associated with the expatriation</td>
<td></td>
</tr>
</tbody>
</table>
Documentary evidence can be used for accounts outside of the U.S. to determine if an account holder is a non-U.S. person

Documentary evidence includes:

- Certificate of tax residence issued by an appropriate tax official of the country in which the payee claims to be a resident that indicates that the payee has filed its most recent income tax return as a resident of that country
- Valid non-U.S. government issued ID (individuals only)
- Third party credit report where certain verification processes are in place (individuals only)
- Documentation that substantiates that the entity is actually organized or created under the laws of a foreign country, and, for FATCA, documentary evidence that is permissible to establish FATCA status of an entity
- With respect to an account maintained in a jurisdiction with AML rules that have been approved by the IRS in connection with a QI agreement, any of the documents other than a Form W-8, or W-9 referenced in the jurisdiction’s attachment to the QI agreement for identifying individuals or entities, and, for an entity, documentary evidence that is permissible to establish FATCA status of an entity
Step 2
Validate documentation —
FATCA, chapters 3 and 61
Step 2: Validate documentation

— Withholding agents must confirm documentation is complete and validate the information against all other account documentation to confirm the tax claim is consistent, e.g., account on-boarding documentation, AML/KYC documentation, etc.

— Reviewing for U.S. indicia, or indicators of U.S. status, is part of document validation; however, reviewing for U.S. indicia alone will not meet validation requirements.

— A withholding agent may rely upon claims made in the documentation, unless it knows or has reason to know that the documentation is incorrect or inconsistent with other information in the possession of the withholding agent.

— Intermediaries need to provide a Form W-8IMY and where appropriate a Withholding Statement.
Withholding statement

Intermediaries and flow-throughs are generally required to provide a withholding statement

A withholding statement serves several purposes:
— Details the allocation of income among underlying beneficial owners
— Provides information for withholding and reporting to the extent required

An intermediary or flow-through can provide either separate chapter 3 and chapter 4 withholding statements or a combined chapter 3 and chapter 4 withholding statement

Validity period
— The withholding statement must be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under FATCA and/or chapter 3
— If intermediary/flow-through does not update periodically, suggest asking to refresh annually to capture any required changes

Format
— As long as the required information is provided on a withholding statement there are no specific requirements as to the format
When is a withholding statement required?

A QI needs to provide a withholding statement, unless it represents that it has assumed primary withholding responsibility. A QI’s withholding statement primarily serves to inform the withholding agent of applicable rates, rather than information specific to underlying recipients.

An NQI needs to transmit Forms W-8 or W-9 from each beneficial owner and provide a withholding statement listing detailed information on allocation and other recipient-specific details.

A non-withholding foreign partnership or non-withholding foreign simple or grantor trust needs to transmit Forms W-8 or W-9 from each beneficial owner and provide a withholding statement listing detailed information on allocation and other recipient-specific details.

A U.S. branch of a foreign bank or insurance company using Form W-8IMY to establish NQI status must transmit Forms W-8 or W-9 from each customer and provide a withholding statement.
Step 3
Manage changes in circumstance
Step 3: Manage changes in circumstance

A Change in Circumstance (CIC) is any change impacting the FATCA or Chapter 3 status of the account holder. Examples of a CIC include, but are not limited to:

Changes in Circumstances (for U.S. FATCA):

- Change in address or phone number from non-U.S. to U.S.
- Expiration of documentation used to support a FATCA status.
- Addition of information that conflicts with current FATCA status.
- Changes in substantial U.S. owners of passive NFFEs.

Any change that provides a withholding agent with “reason to know” the FATCA status is not valid.
Step 4
Apply presumption rules
Step 4: Apply presumptions

— Under the FATCA and QI regimes, in the absence of valid documentation, presumptions are mandatory and apply regardless of actual knowledge, unless reliance on actual knowledge would result in a greater amount of withholding

— The presumptions apply to determine:
  - U.S. tax classification of payee
  - Status of payee as U.S. or foreign
  - Status of payee as beneficial owner, intermediary, or flow through entity

— Keep in mind, there are different presumption rules for individuals versus entities
Withholding
Determine withholding rate

Where appropriate, the withholding agent must determine the correct amount of tax withholding. The withholding tax rate is determined by:

- Income type
- Date of payment
- Payee status (from Forms W-8/W-9)
- Payee type (from Forms W-8/W-9)
- FATCA classification (from Forms W-8/W-9)
- Document status (from Forms W-8/W-9)
- Treaty benefits applied for (from Forms W-8/W-9)
- Treaty country (from Forms W-8/W-9)

Treaty rates for different income types are found in the tax treaty tables on the IRS website (no longer included in IRS Publication 515)
Determine FATCA withholding rate

In a Model 1 IGA jurisdiction, FATCA withholding only applies on payments made by primary withholding QIs to their NPFFI account holders (or when withholding is passed up to an upstream withholding agent that has an obligation to withhold)

**FATCA withholding is 30% and may not be reduced by treaty or statute. Some special rules will apply with respect to refunds**

If FATCA withholding has been appropriately withheld from a payment for which the beneficial owner is a financial institution in a treaty jurisdiction, the difference between the 30% FATCA withholding and the treaty rate applicable to the particular type of income can be refunded.

If a withholding agent has withheld on payments for which an NPFFI is acting as an intermediary (i.e., the NPFFI is not the beneficial owner of the payment), there can be no refund.

If FATCA withholding applies, there will be no chapter 3 withholding. If FATCA withholding does not apply, must then look to see if chapter 3 withholding will apply
Determine U.S. non-resident withholding rate

Chapter 3/U.S. nonresident withholding rate is also 30% but it may be reduced
Rate can be reduced with proper documentation by:

- Statute (e.g., 0% for portfolio interest)
- Treaty (e.g., certain countries have negotiated 15% for dividends)

Additionally, graduated rates may apply (after allowable deductions) if the U.S. source FDAP income is effectively connected with a U.S. trade or business or, in certain circumstances, gains from the sale of a U.S. real property interest.
Effective as of 1/1/18: backup withholding rate is 24%

This change was effective with the Tax Cuts and Jobs Act of 2017. There is no more 28% backup withholding rate.

The backup withholding rate is tied to the various personal tax rate brackets – therefore, this change in the backup withholding rate is not (currently) permanent. Once the individual rates increase effective January 1, 2026, the backup withholding rate will again increase.
Reporting
Form 8966
Forms 8966

- The Form 8966 was developed for U.S. withholding agents, Model 2 IGA FIs, and PFFIs to use to report specified U.S. persons and U.S. owned legal entities.
- Financial institutions filing Forms 8966 must file electronically.
- The Form 8966 is due by March 31 of the year following the calendar year being reported.
- An automatic 90-day extension of time to file Form 8966 is available via Form 8809-I, Application for Extension of Time to File FATCA Form 8966:

  - No extension of time to file is permitted for Forms 8966 filed by a Reporting Model 2 FFI to report a non-consenting U.S. account.
  - There was a special COVID-19 exception for 2019 filings due in 2020.
Model 1 IGA jurisdictions

The Form 8966 is not being used by Model 1 IGA jurisdictions as FIs in these countries are reporting to their local governments

— Model 1 IGA reporting is submitted to local portals that have been established by each of the participating governments. Each portal has its own set of rules and requirements

IGA reporting data elements mirror those required on Forms 8966. Each IGA country may set additional rules for data elements or formats in which to report. The standard schema for IGA reporting is found in IRS Publication 5124

Recipient copies are not required for 8966 or IGA reporting; however, some institutions are choosing to provide as a customer service
Model 1 IGA reporting

IGA FFIs are required to file FATCA xml schema (deemed equivalent to Form 8966) annually with the local tax authorities (or, as in the case of Singapore, file directly with the IRS and notify the IRS once filing is completed)

- Nil reporting requirements vary by jurisdiction.
- Due dates vary by jurisdiction.
- Beware of jurisdiction specific additional data elements (e.g., India).
- Review guidance in implementation guidance notes and reporting guides issued by local tax authorities.
Form 1042 and Form 1042-S
Form 1042-S & Form 1042 reporting

When a payment of U.S. source FDAP income is made to a U.S. nonresident (regardless of whether or not withholding was required), the withholding agent must file:

- Information returns on Form 1042-S to the IRS.
- Recipient statements (Copy B of Form 1042-S).
- An annual tax return on Form 1042.
Form 1042 reporting

Withholding agents must file with the IRS an annual income tax return on Form 1042 to report:

- The aggregate amount of chapter 3 and chapter 4 reportable amounts made in the taxable year
- Any tax withheld

Form 1042 includes tax liabilities under both chapter 3 (current U.S. non-resident withholding) and chapter 4 (FATCA). This makes reconciliation of deposits extremely challenging.
Extensions

- Forms 1042-S and 1042 are due by March 15th
- An automatic 30-day extension for filing IRS copies of the Form 1042-S can be requested by filing Form 8809

- A separate 30-day extension request is required for recipient copies of the Forms 1042-S
  - You must fax a letter to the Martinsburg, WV IRS center to request this (details in the instructions to the Form 1042-S)
  - This is a 2020 change – previously you would mail the letter, now you fax the letter

- An automatic 6 month extension for filing the Form 1042 can be requested by filing Form 7004
  - This is an extension of time to file the form but not an extension of time to pay tax due
## New penalty amounts - Adjusted for inflation

<table>
<thead>
<tr>
<th>Specific penalty</th>
<th>Amount (returns due 1/1/20 – 12/31/20)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penalty on corrections filed within 30 days</td>
<td>$50 per occurrence, annual cap of $556,500</td>
</tr>
<tr>
<td>Maximum penalty on information returns and payee statements filed by August 1</td>
<td>$110 per occurrence, annual cap of $1,669,500</td>
</tr>
<tr>
<td>Maximum penalty on information returns and payee statements</td>
<td>$270 per occurrence, annual cap of $3,339,000</td>
</tr>
<tr>
<td>Minimum Penalty in the case of intentional disregards (Maximum penalty of 5 or</td>
<td>$550 per occurrence, no cap</td>
</tr>
<tr>
<td>10 percent of the amount that should have been reported remains unchanged)</td>
<td></td>
</tr>
</tbody>
</table>
Typical CSD account structures
Relevant scenario
U.S. source FDAP income
U.S. source dividends and interest beneficially owned by non-U.S. investors.

FOREIGN CSD IS A NQI
BENEFICIAL OWNER HOLDS ACCOUNT WITH CSD

Global Custodians
Upstream withholding agents

- CUSTODIAN “A”
  USWA
  Account –Foreign CSD
  U.S. shares of “X”

- CUSTODIAN “B”
  Qualified Intermediary
  Account –Foreign CSD
  U.S. bonds of “Y”

FOREIGN CSD
NQI (Ch3) / PFFI / RM1-2 (Ch4)

- U.S. Shares
  Investor X’s account
  U.S. shares

- U.S. Bonds
  Investor Y’s account
  U.S. bonds

Investor “X”
U.S. shares

Investor “Y”
U.S. bonds
**Documentation Flow - CSD is a NQI**

- **Upstream withholding agent**
- **CSD**
  - *Form W-8 IMY of CSD + CSD’s withholding statement + 2,000 Forms W-8/W-9 from investors*
  - 2,000 Forms W-8 / W-9 from investors
- **2,000 Investors**
  - U.S. shares & U.S. bonds

*CSD discloses investors’ information to upstream withholding agent*
Form 1042-S reporting - CSD is a NQI

*Upstream withholding agent discloses investors’ information to the IRS on Forms 1042-S

Upstream withholding agent*

CSD NQI

2,000 Investors U.S. shares & U.S. bonds

*Form 1042-S / 4,000 recipient-specific returns

March 15 or April 14 with automatic 30-day extension

Form 1042-S / 4,000 recipient copies for investors
Upstream withholding agent discloses investor’s information to the IRS on Form 1042-S
Global Custodians
Upstream Withholding Agents

Relevant scenario
U.S. source FDAP income
U.S. source dividends and interest beneficially owned by non-U.S. investors

FOREIGN CSD IS A NQI
PARTICIPANT IS A NQI AND HOLDS ACCOUNT WITH CSD
BENEFICIAL OWNER HOLDS ACCOUNT WITH PARTICIPANT

FOREIGN CSD
NQI (Ch3) / PFFI / RM1-2 (Ch4)

<table>
<thead>
<tr>
<th>U.S. shares</th>
<th>U.S. bonds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participant’s account (NQI) U.S. shares of X</td>
<td>Participant’s account (NQI) U.S. bonds of Y</td>
</tr>
</tbody>
</table>

Participant NQI PFFI / RM1-2 (Ch4)
Investor X’s U.S. shares

Participant NQI PFFI / RM1-2 (Ch4)
Investor Y’s U.S. bonds

Investor “X”
U.S. shares

Investor “Y”
U.S. bonds
Documentation Flow - CSD and Participant are NQIs

- **Upstream withholding agent**
  - *Form W-8 IMY of CSD + Form W-8 IMY of Participant + withholding statement of Participant + 2,000 Forms W-8/W-9 from investors*

- **CSD**
  - NQI
  - *Form W-8 IMY of Participant + withholding statement of Participant + 2,000 Forms W-8/W-9 from investors*

- **Participant**
  - NQI
  - 2,000 Forms W-8 / W-9 from investors

- **2,000 Investors**
  - U.S. shares & U.S. bonds
  - *Participant discloses investors’ information to CSD and CSD passes such information to upstream withholding agent*
Form 1042-S reporting - CSD and Participant are NQIs

*Upstream withholding agent discloses investors’ information to the IRS on Forms 1042-S

**Upstream withholding agent discloses investors’ information to the IRS on Forms 1042-S**

March 15 or April 14 with automatic 30-day extension
Upstream withholding agent discloses investor’s information to the IRS on Form 1042-S
Relevant scenario
U.S. source FDAP income
U.S. source dividends and interest beneficially owned by non-U.S. investors

FOREIGN CSD IS A QI
PARTICIPANT IS A NQI AND HOLDS ACCOUNT WITH CSD
BENEFICIAL OWNER HOLDS ACCOUNT WITH PARTICIPANT

Global Custodians
Upstream Withholding Agents

FOREIGN CSD QI (Ch3) / PFFI / RM1-2 (Ch4)

CUSTODIAN “A” USWA
Omnibus Account – Foreign CSD
U.S. shares of “X”

CUSTODIAN “B” Qualified Intermediary
Omnibus Account – Foreign CSD
U.S. bonds of “Y”

FOREIGN CSD
QI (Ch3) / PFFI / RM1-2 (Ch4)

U.S. Shares
Participant’s account (NQI)
U.S. shares of X

U.S. Bonds
Participant’s account (NQI)
U.S. bonds of Y

Participant NQI
PFFI / RM1-2 (Ch4)
Investor X’s U.S. shares

Participant NQI
PFFI / RM1-2 (Ch4)
Investor Y’s U.S. bonds

Investor “X”
U.S. shares

Investor “Y”
U.S. bonds

KPMG
Documentation Flow - CSD is a QI and Participant is a NQI

- **Upstream Withholding Agent**
  - Form W-8IMY of CSD + withholding statement (pool)

- **CSD QI**
  - *Form W8-IMY of Participant + withholding statement of Participant + 2,000 Forms W-8/W-9 from investors*

- **Participant* NQI**
  - 2,000 Forms W8/W9 from investors

- **2,000 Investors U.S. shares & U.S. bonds**
  - *Participant discloses investors’ information to CSD and CSD does NOT pass such information to upstream withholding agent*
Form 1042-S reporting - CSD is a QI and Participant is a NQI

Upstream Withholding Agent

CSD* QI

Participant NQI

2,000 Investors U.S. shares & U.S. bonds

Form 1042-S / 2 returns (CSD is recipient)
March 15 or April 14 with automatic 30-day extension

*CSD discloses investors’ information to the IRS on Forms 1042-S

Form 1042-S / 4,000 recipient-specific returns
March 15 or April 14 with automatic 30-day extension

Form 1042-S / 4,000 recipient copies for investors

IRS

*Form 1042-S / 4,000 recipient-specific returns
Upstream withholding agent does NOT disclose investor’s information to the IRS on Form 1042-S
CSD discloses investor’s information to the IRS on Form 1042-S
Relevant scenario
U.S. source FDAP income
U.S. source dividends and interest beneficially owned by non-U.S. investors

FOREIGN CSD IS A QI
PARTICIPANT IS A QI AND HOLDS OMNIBUS ACCOUNT WITH CSD
BENEFICIAL OWNER HOLDS ACCOUNT WITH PARTICIPANT
Upstream Withholding Agent

CSD QI

Participant QI

2,000 Investors U.S. shares & U.S. bonds

Form W-8 IMY of CSD + withholding statement (pool)

*Form W-8 IMY of Participant + withholding statement (pool)

2,000 Forms W-8 / W-9 from investors

*Participant does not disclose investors’ information to CSD
Form 1042-S reporting - CSD and Participant are QIs

**Upstream Withholding Agent**
- Form 1042-S / 2 copies
- March 15 or April 14 with automatic 30-day extension

**CSD QI**
- Form 1042-S / 2 copies
- March 15 or April 14 with automatic 30-day extension

**Participant QI**
- Form 1042-S / 2 pooled returns
- March 15 or April 14 with automatic 30-day extension

2,000 Investors U.S. shares & U.S. bonds

*Investors’ information is NOT disclosed to the IRS on Forms 1042-S*
Upstream withholding agent does NOT disclose investor’s information to the IRS on Form 1042-S
CSD does NOT disclose investor’s information to the IRS on Form 1042-S
Participant does NOT disclose investor’s information to the IRS on Form 1042-S.
Tax Refund Procedures
Refund Procedures - Upstream WHA is QI

One of the core benefits of QI status is the ability to apply for a collective refund on behalf of the underlying beneficial owners

— **Requirements:**
  - QI must not have issued (and will not issue) Forms 1042-S to the account holders that received the payment that was subject to overwithholding; and
  - QI must submit as part of the Form 1042 a statement detailing the reason for the overwithholding as well as various other representations.

— **Process:**
  - QI refunds clients; and
  - QI makes refund claim as part of Form 1042 filing.

— **Benefits:**
  - Process is fairly quick compared to individual account holders filing refund claims – e.g., generally 3 to 6 months.
  - Not required – QI does not have to do this, rather can provide payee specific Forms 1042-S showing overwithholding and have underlying account holders file their own refund claims.
Refund Procedures - Upstream WHA is NQI

When the upstream withholding agent is an NQI, underlying account holders must separately apply for refunds of overwithholding

— Requirements:
  - File Form 1120-F.
  - Include with the submission a Form W-8 establishing non-U.S. status (including affidavit of unchanged status to extent necessary), copy of Form 1042-S demonstrating overwithholding.

— Process:
  - Underlying account holder makes refund claim.
  - Underlying account holder receives refund from IRS.

— Considerations:
  - Requires underlying account holder to have U.S. taxpayer identification number (“TIN”). To the extent the U.S. TIN was not included on the Form 1042-S issues by the NQI, then underlying account holder must request NQI to issue amended Form 1042-S showing U.S. TIN.
  - Lengthy process – assume 18 to 24 months post filing of the Form 1120-F.
Other related Refund Procedures

When investors participate in certain corporate actions, such as buy-backs and cash mergers, upstream withholding agents are required to treat the income received by non-U.S. investors as a dividend, rather than proceeds from a sale, and withhold 30% (unless otherwise reduced by treaty).

However, if the non-U.S. investor can certify that their proportionate ownership in the security has been reduced or terminated as a result of their participation in the corporate action, the upstream withholding agent can re-characterize the income from a dividend to proceeds.

— Requirements:

Underlying account holder completes and provides Certification of Treatment of Tender Payment.

Assuming the calculations presented in the worksheet demonstrate that the proportionate ownership in the security has been reduced or terminated as a result of the corporate action, the withholding agent can refund the withholding.

Most withholding agents provide 30 day window to deliver the certification — if not provided within the window underlying account holder would need to file refund claim with IRS.
Overview of the common reporting standard (CRS)
The Common Reporting Standard (“CRS”)

Automatic exchange of financial account information via the CRS is a tool to counter tax evasion and increase voluntary tax compliance. Its key building blocks are:

— Reporting on relevant account holders and controlling owners of nonfinancial entities (NFEs)
— Due diligence to identify tax residence(s) of account holders and controlling persons of NFEs through self certifications or other specified means

The AEOI framework comprises the following elements:

— Due diligence rules and reporting requirements that underpin the automatic exchange of information

— The Model Competent Authority Agreement (“CAA”) – this links the CRS to the legal basis for exchange and specifies the information to be exchanged. It can be multilateral (“MCAA”) or bilateral

— The Commentaries that illustrate and interpret the CAA and CRS

— Guidance on technical solutions, including (a) an XML schema to be used for exchanging the information; (b) standards in relation to data safeguards and confidentiality, transmission and encryption

OECD has launched an Automatic Exchange of Information (“AEOI”) Portal – a repository of information produced by OECD and participating governments
Current status

— Over 100 jurisdictions so far have committed to implement the Standard for the Automatic Exchange of Financial Account Information in Tax Matters (the “AEOI Standard,” is commonly referred to by its principal component: the CRS)

— As of the OECD’s most recent update on December 10, 2020, 110 jurisdictions have signed the MCAA implementing the AEOI standard (see https://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/crs-mcaa-signatories.pdf)

Note: The United States is not a participant in CRS
## CRS jurisdictions - Last OECD update February 2021

### Jurisdictions undertaking first exchanges by 2017 (49)

- Anguilla*
- Argentina*
- Belgium*
- Bermuda*
- BVI*
- Bulgaria*
- Cayman Islands*
- Colombia*
- Croatia*
- Cyprus*
- Czech Republic*
- Denmark*
- Estonia*
- Faroe Islands*
- Finland*
- France*
- Germany*
- Gibraltar*
- Greece*
- Guernsey*
- Hungary*
- Iceland*
- India*
- Ireland*
- Isle of Man*
- Italy*
- Jersey*
- Korea*
- Latvia*
- Liechtenstein*
- Lithuania*
- Luxembourg*
- Malta*
- Mexico*
- Montserrat*
- Netherlands*
- Norway*
- Poland*
- Portugal*
- Romania*
- San Marino*
- Seychelles*
- Slovakia*
- Slovenia*
- South Africa*
- Spain*
- Sweden*
- Turks and Caicos*
- United Kingdom*

### Jurisdictions undertaking first exchanges by 2018 (51)

- Andorra*
- Antigua and Barbuda*
- Aruba*
- Australia*
- Austria*
- Azerbaijan*
- Bahamas*
- Bahrain*
- Barbados*
- Belize*
- Brazil*
- Brunei*
- Canada*
- Chile*
- China*
- Cook Islands*
- Costa Rica*
- Curacao*
- Dominica*
- Greenland*
- Grenada*
- Hong Kong*
- Indonesia*
- Israel*
- Japan*
- Lebanon*
- Marshall Islands*
- Macao (China)*
- Malaysia*
- Mauritius*
- Monaco*
- Nauru*
- New Zealand*
- Niue*
- Pakistan*
- Panama*
- Qatar*
- Russia*
- Saint Kitts and Nevis*
- Samoa*
- Saint Lucia*
- Saint Vincent and the Grenadines*
- Saudi Arabia*
- Singapore*
- Sint Maarten*
- Switzerland*
- Trinidad and Tobago
- Turkey*
- UAE*
- Uruguay*
- Vanuatu*

### Jurisdictions undertaking first exchanges by 2019/2020/2021/2022/2023 (16)

- Ghana* (2019)
- Kuwait* (2019)
- Nigeria* (2020)
- Oman* (2020)
- Peru* (2020)
- Albania* (2021)
- Ecuador* (2021)
- Kazakhstan* (2021)
- Maldives (2021)
- Kenya* (2022)
- Morocco* (2022)
- Georgia (2023)
- Jordan (2023)
- Montenegro (2023)
- Thailand (2023)
- Uganda (2023)

### Key

- * – Signatory to the Multilateral Competent Authority Agreement (MCAA) 110 countries.

**Green** – Model 1 IGA jurisdictions

**Blue** – Model 2 IGA jurisdictions
Now that we have reviewed the various regimes, let’s highlight the similarities and differences to better understand each.

Unlike FATCA, CRS has only two components: due diligence and reporting.

<table>
<thead>
<tr>
<th>FATCA</th>
<th>CRS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Account due diligence</strong></td>
<td><strong>Account due diligence</strong></td>
</tr>
<tr>
<td><strong>Withholding</strong></td>
<td><strong>No withholding taxes under the CRS</strong></td>
</tr>
<tr>
<td><strong>Reporting</strong></td>
<td><strong>Reporting</strong></td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>FATCA</th>
<th>CRS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Looking for U.S. persons only</td>
<td>Looking for nonresident accountholders and controlling persons of NFE in any CRS participating jurisdiction</td>
</tr>
<tr>
<td>Citizenship and tax residence based</td>
<td>Tax residency based</td>
</tr>
<tr>
<td>One to one reporting</td>
<td>One to many reporting</td>
</tr>
<tr>
<td>Withholding is “stick” to achieve compliance</td>
<td>No withholding</td>
</tr>
</tbody>
</table>
Questions?
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